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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Petition for Declaratory Ruling)
that Microwave System Operated)
by the South Florida Water)
Water Management District is a Public)
Safety Facility)

RM-8657

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COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association (PCIA) hereby submits its comments on the Petition for Declaratory Ruling filed by the South Florida Water Management District.¹ PCIA is an international trade association representing the interests of both commercial mobile radio service and private mobile radio service.² Many PCIA members are PCS auction winners and future PCS licensees who will be required to relocate fixed microwave incumbents from the 2 GHz band in order to

¹ Petition for Declaratory Ruling of the South Florida Water Management District, RM-8657 (filed May 15, 1995)[hereinafter "the District's Petition"]. The South Florida Water Management District will hereinafter to referred to as "the District."

² PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

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deploy their PCS systems. PCIA has participated in the Commission's proceedings on PCS from the beginning and continues to work with the industry to facilitate the deployment of these new and exciting products and services to the public.

In its Petition, the District requests a determination that its microwave system qualifies as a public safety facility as defined in the Commission's PCS transition rules in order to take advantage of the longer relocation negotiation periods permitted that class of entities. However, because the District's system does not satisfy the FCC's narrow criteria for classification as a public safety facility, the Commission should deny the Petition. Concomitantly, the agency should reaffirm its prior decisions refusing to unnecessarily expand the public safety category so as not to delay the availability of PCS services to the public.

I. THE FCC'S TRANSITION SCHEME ALREADY MORE THAN ADEQUATELY PROTECTS ALL MICROWAVE INCUMBENTS, INCLUDING PUBLIC SAFETY LICENSEES

In order for PCS systems to be deployed and the public to take full advantage of this new technology, microwave incumbents currently operating in the 2 GHz band must be relocated to other spectrum. To protect those incumbents from disruption of their services and the imposition of burdensome costs, the FCC has expended significant resources establishing detailed transition rules, the purpose of which is to balance the PCS interests' need to clear the band with the incumbents' continuing communications needs.

In brief, for most microwave systems, the rules set out a two-year voluntary negotiation period followed by a one-year mandatory period in which the incumbent and the PCS licensee must come to an agreement for the relocation of the incumbent's link.³ Applicable relocation requirements include the following:

- All relocation costs, including engineering, equipment, site costs, and FCC fees will be paid entirely by the emerging technology licensee.
- New facilities must be comparable (as good as or superior to) the facilities being replaced.
- The new facilities must be completed and tested prior to the relocation.
- If the new facilities are not equivalent, the incumbent may relocate back to its original facilities until equivalence is attained.⁴

The FCC has permitted a longer relocation timeframe to certain public safety licensees transmitting particularly vital communications in recognition of the often time-consuming economic and procedural burdens that may be involved in making changes to their systems as well as the unique importance of communications involved in the provision of police, fire, and emergency medical services.⁵ While these lengthened negotiation periods are intended to further ease the transition process for eligible public

³ Incumbents subject to relocation by UTAM, Inc., the unlicensed PCS frequency coordinator, have different negotiation periods.

⁴ Redevelopment of Spectrum, Memorandum Opinion and Order, 9 FCC Rcd 1943, 1947-48 ¶ 35 (1994).

⁵ Redevelopment of Spectrum, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589, 6610 ¶¶ 50-51 (1993).

safety licensees, the FCC's comparable system cost compensation and other requirements will, in fact, ensure that all licensees are fully protected.

II. EXPANSION OF THE PUBLIC SAFETY CLASSIFICATION TO ADDITIONAL LICENSEES NOT SATISFYING THE EXISTING CRITERIA WILL DELAY THE DEPLOYMENT OF PCS WITH NO DEMONSTRABLE COUNTERVAILING PUBLIC BENEFIT

The FCC has defined the limited public safety classification as incorporating:

those Part 94 facilities currently licensed on a primary basis under the eligibility requirements of Section 90.19, Police Radio Service; Section 90.21, Fire Radio Service; Section 90.27, Special Emergency Medical Radio Service; and Subpart C of Part 90, Special Emergency Radio Services; and on which a majority of communications carried on those facilities are used for police, fire, or emergency medical services operations involving safety of life and property. Additionally, licensees of other Part 94 facilities licensed on a primary basis under the eligibility requirements of Part 90, Subparts B and C, may request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.⁶

Although there is no question that other licensees provide important public services, the FCC wisely chose not to classify all Part 94 entities as public safety for the purposes of the relocation rules and specifically rejected a general expansion of the class to include entities such as the District.⁷ Limiting the size of the public safety classification ensures that the most important public services receive additional time for a trouble-free relocation while avoiding unwarranted delays in PCS deployment. Therefore, the

⁶ Memorandum Opinion and Order, 9 FCC Rcd at 1948 ¶ 36 (emphasis added).

⁷ Id. at 1949-50 ¶¶ 46-52.

FCC should strictly scrutinize all incumbent requests for the classification of their systems as public safety facilities.

PCIA does not dispute that the District provides important services to South Florida. However, by its own admission, the majority of its communications do not relate to protecting life and property from imminent, substantial risks as required under the Commission's public safety classification. The District utilizes an intricate system of canals and levees to provide South Florida with: flood protection, water supply, water quality protection, and environmental protection and enhancement.⁸ A microwave network is used to control and monitor this system. However, the District has made no showing that the majority of communications carried by that network rise to the level of protection of the public from imminent danger in the same way as police, fire, and emergency medical services.

In contrast, the facilities categorized as public safety by the FCC are characterized by the need for immediate response to situations threatening life and property. Pointedly, the Commission has not classified all medical services-related communications systems as public safety, but only those supporting emergency medical services. The functions performed by the District's systems are more akin to the public-utility type communications which were specifically excluded from the FCC's limited public safety definition.⁹ In crafting that definition, the FCC has thus clearly

⁸ District's Petition at 3.

⁹ Memorandum Opinion and Order, 9 FCC Rcd at 1949-50 ¶¶ 46-52.

drawn a line between such communications and those directly protecting life and property.

Most importantly, the FCC will undermine its policy to ensure the rapid deployment of PCS to the public if it allows numerous licensees -- who are already fully protected under the transition rules -- to reclassify their links as public safety systems, thus lengthening the relocation process for those systems to a maximum of seven years: five years of negotiation; one year to relocate the link; and one year for testing the system. During this period, the public will be deprived of the use of PCS, which itself is expected to bring significant public safety benefits. In sum, expanding the public safety category will lengthen the time for full deployment of PCS without benefitting the reclassified incumbents or the public.

III. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to deny the Petition for a Declaratory Ruling that the microwave system operated by the South Florida Water Management District is a public safety facility as defined by the PCS transition rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 1995, I caused copies of the foregoing "Comments of the Personal Communications Industry Association" to be sent via first-class mail to the following:

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